



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA-HQ-SFUND-2012-0738; FRL-9791-4]

National Oil and Hazardous Substances Pollution Contingency Plan; Revision to Increase Public Availability of the Administrative Record File

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action on an amendment that was withdrawn in a January 22, 2013, Federal Register withdrawal notice. The amendment that is the subject of today's final rule adds language to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to broaden the technology, to include computer telecommunications or other electronic means, that the lead agency is permitted to use to make the administrative record file available to the public.

DATES: This final rule is effective on **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-SFUND-2012-0738. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by

statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Superfund Docket (Docket ID No. **EPA-HQ-SFUND-2012-0738**). This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Superfund Docket telephone number is (202) 566-0276. EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Melissa Dreyfus at (703) 603-8792 (dreyfus.melissa@epa.gov), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460-0002, Mail Code 5204P.

SUPPLEMENTARY INFORMATION:

I. Why is EPA publishing this final rule?

On November 7, 2012, EPA published in the Federal Register a Direct Final rule entitled *National Oil and Hazardous Substances Pollution Contingency Plan; Revision to Increase Public Availability of the Administrative Record File* (77 FR 66729) (hereafter the Direct Final rule). This Direct Final rule added language to 40 CFR 300.805(c) of the NCP to broaden the technology, to include computer telecommunications or other electronic means, that the lead agency is permitted to use to make the administrative record file available to the public. At the same time, EPA also published a parallel Proposed rule (77 FR 66783) that

requested comment on the same change to the NCP. We stated in that Direct Final rule that if we received adverse comment on the amendment by December 7, 2012, the affected amendment would not take effect and we would publish a timely withdrawal in the Federal Register of the amendment. We received one adverse comment and as a result withdrew the amendment on January 22, 2013 (78 FR 4333). EPA is publishing today's Final rule to address the adverse comment received on the amendment listed above and to finalize this amendment.

II. Background

A. What Does This Amendment Do?

In the November 7, 2012, Direct Final rule, 40 CFR 300.805(c)-“Location of the Administrative Record File” in Subpart I-“Administrative Record for Selection of Response Action” of the National Oil and Hazardous Substances Pollution Contingency Plan, was revised to acknowledge advancements in technologies used to manage and convey information to the public. Specifically, this revision to the NCP added language to broaden the technology, to include computer telecommunications or other electronic means, that the lead agency is permitted to use to make the administrative record file available to the public regarding documents that form the basis for the selection of a response action. This amendment to the NCP does not limit the lead agency’s ability to make the administrative record file available to the public in traditional forms such as paper and microform. Based on the preferences of the community and the lead agency’s

assessment of the site-specific situation, the lead agency will determine whether to provide: 1) traditional forms (e.g. paper copies; microform) 2) electronic resources, or 3) both traditional forms and electronic resources. The lead agency should assess the capacity and resources of the public to utilize and maintain an electronic- or computer telecommunications-based repository to make a decision on which approach suits a specific site.

B. What Comment Did EPA Receive and How Is It Addressed?

While three comments were submitted in a timely manner, only one of them is considered to be substantive. This comment, submitted anonymously, stated that “This modification to the current methods of conveying information to the general public is prudent and likely to increase public awareness of activities relating to the National Contingency Plan.” However, the commenter was “...curious as to how the ‘preferences of the community and the lead agency’s assessment of the site-specific situation’ will be determined.”, as “Within any single community, there is probably going to be a range of capabilities and preferences regarding the delivery of a record file.” The commenter went on to explain “In determining community preference, the Agency should be cautious, again, of allowing the overrepresentation of special interests, for these interests may attempt to project a community preference for traditional microform files so that public participation does not increase. But, as the Proposed rule explains, the lead agency will be free to

determine that both electronic and traditional microform information be available, which, when faced with competing views, is best for effectuating the purpose of this necessary and wise amendment.”

In response to this comment, EPA agrees that the amendment being promulgated today is a useful and important change that will give the lead agency the ability to serve the information needs of a broader population. In the Direct Final rule (and parallel Proposed rule), EPA explained that the lead agency should assess the capacity and resources of the public to utilize and maintain an electronic- or computer telecommunications-based repository to make a decision on which approach suits a specific site. Based on the preferences of the community and the lead agency’s assessment of the site-specific situation, the lead agency will determine whether to provide: 1) traditional forms (e.g. paper copies; microform) 2) electronic resources, or 3) both traditional forms and electronic resources.

Further, EPA agrees with the commenter’s remark that “In determining community preference, the Agency should be cautious, again, of allowing the overrepresentation of special interests, for these interests may attempt to project a community preference for traditional microform files so that public participation does not increase.” Community preferences and access to technological resources may be gleaned through community interviews conducted as part of the planning

for the Community Involvement Plan (CIP) at a site.¹ A CIP is a site-specific strategy to enable meaningful community involvement throughout the Superfund cleanup process. Consistent with the NCP [300.415(n)(3)(ii); 300.415(n)(4)(i); and 300.430(c)(2)(ii)(A-C)], the lead agency prepares a Community Involvement Plan (formerly called a Community Relations Plan) “...based on the community interviews and other relevant information, specifying the community relations activities that the lead agency expects to undertake during the remedial response.” In addition, consistent with the NCP [40 CFR 300.415(n)(3)(i); 40 CFR 300.415(n)(4)(i); and 300.430(c)(2)(i)] the lead agency conducts “interviews with local officials, community residents, public interest groups, or other interested or affected parties, as appropriate, to solicit their concerns and information needs, and to learn how and when citizens would like to be involved in the Superfund process.”

EPA generally recommends that interviews be conducted with at least 25 community members, though a complex site may warrant 100 or more interviewees, and a small or remote site might warrant less than 25 interviewees.² Conducting community interviews typically is a particularly effective way to gather information about community needs, questions, and concerns, as well as

¹U.S. Environmental Protection Agency. 2011. Superfund Community Involvement Toolkit. Community Involvement Plans. Available online: <http://www.epa.gov/superfund/community/pdfs/toolkit/ciplans.pdf>

² U.S. Environmental Protection Agency. 2011. Superfund Community Involvement Toolkit. Community Interviews. Available online at <http://www.epa.gov/superfund/community/pdfs/toolkit/5cominterv.pdf>

expectations and unique needs or cultural behaviors, customs, and values.

Community interviews also give the lead agency the opportunity to hear the preferences of community members that may have otherwise hesitated to share during a public meeting or availability session. The information and insights gained from community interviews will help the lead agency to assess the capacity and resources of the community to utilize and maintain an electronic- or computer telecommunications-based repository, and to make a decision on which approach suits a specific site and best encourages the community's participation.

In addition, in accordance with Section 508 of the Rehabilitation Act of 1973, as amended, the lead agency is responsible for ensuring that all electronic and information technology is accessible to persons with disabilities. This typically involves procuring, creating, maintaining and using electronic and information technology, including, Web sites, software, hardware, video and multimedia, and telecommunications, that is Section 508 compliant,³ as well as incorporating other techniques to ensure accessibility.

Thus, the amendment being promulgated today is a useful and important change that will give the lead agency the ability to serve the information needs of a broader population, while maintaining the ability to provide the administrative record file to

³ Further information on Section 508 is available online: <http://www.section508.gov>

the public as: 1) traditional forms (e.g. paper copies; microform) 2) electronic resources, or 3) both traditional forms and electronic resources. EPA is today promulgating the change to add language to 40 CFR 300.805(c) as was proposed.

III. Statutory and Executive Order Reviews

As explained above, this rule takes final action on an amendment for which we received adverse comment in response to our November 7, 2012, *National Oil and Hazardous Substances Pollution Contingency Plan; Revision to Increase Public Availability of the Administrative Record File* Direct Final rule (and parallel Proposed rule).

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this action is not a “significant regulatory action” and is therefore not subject to OMB review. This action merely adds language to 40 CFR 300.805(c) of the NCP to broaden the technology, to include computer telecommunications or other electronic means, that the lead agency is permitted to use to make the administrative record file available to the public. This action will enable the lead agency to serve the information needs of a broader population while maintaining the ability to provide traditional means of public access, such as paper copies and microform, to the administrative record file. This action does not impose any requirements on any entity, including small

entities. Therefore, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), after considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not contain any unfunded mandates or significantly or uniquely affect small governments as described in Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub.L. 104-4). This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this action has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of Section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Because this action does not contain legally binding requirements, it is not subject to the Congressional Review Act.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 11, 2013.

Mathy Stanislaus,

Assistant Administrator,

Office of Solid Waste and Emergency Response.

For the reasons set out above, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 300 – NATIONAL OIL AND HAZARDOUS SUBSTANCES

POLLUTION CONTINGENCY PLAN

1. The authority citation for part 300 continues to read as follows:

AUTHORITY: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

2. Section 300.805 is amended by revising paragraph (c) to read as follows:

§300.805 Location of the administrative record file.

* * * * *

(c) The lead agency may make the administrative record file available to the public in microform, computer telecommunications, or other electronic means.

[FR Doc. 2013-06189 Filed 03/15/2013 at 8:45 am; Publication Date: 03/18/2013]